

BOARD OF APPEALS CASE NO. 4907

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BEFORE THE

APPLICANT: McDonald's Corporation

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ZONING HEARING EXAMINER

REQUEST: Special Exception to permit
a restaurant in the Village Business District;
3711 Federal Hill Road, Jarrettsville

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/25/99 & 9/1/99

HEARING DATE: October 4, 1999
November 1, 1999

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Record: 8/27/99 & 9/3/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant, McDonald's Corporation, is requesting a special exception pursuant to Harford County Code, Section 267-53(H)(7) to allow a fast food restaurant with eat-in, drive-thru order and pick-up service in a Village Business District.

The subject parcel is located in the center of the Village of Jarrettsville, with an address of 3711 Federal Hill Road, Jarrettsville, Maryland 21084. It is more particularly identified on Tax Map No. 32, Grid No. 1B, Parcel 207. Though the address is listed as Federal Hill Road (MD Route 165), the property is L-shaped and also has frontage on Jarrettsville Road. The proposed building would actually face Jarrettsville Road rather than Federal Hill. The parcel is approximately 3 acres in size, is presently zoned VB Village Business, and is located entirely within the Fourth Election District.

The parcel is already improved by a High's convenience store and Texaco gas station, both of which front onto Federal Hill Road.

Mr. Torrence Pierce, the engineering and site plan expert for McDonald's, testified that this project involves the construction of a 60-seat restaurant with drive-thru windows on the west side of the building and 46 parking spaces placed in the perimeter around the building.

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There would be two access driveways: one utilizing an existing access drive which currently serves the High's convenience store and Texaco gas station with entry off of Federal Hill Road (and which 25 foot wide access drive would be extended beyond its current boundary up to the proposed parking lot area) and one new driveway to be constructed off of West Jarrettsville Road on the east side of the property. The witness noted that the 40,000 square foot septic reserve area, previously recorded for the High's store, was intended to serve the entire property. In light of the required reserve, McDonald's proposes to locate a stormwater management pond or tanks partially or totally underneath the parking area and plans to meet all health department and other county requirements. The witness confirmed that the property is zoned Village Business and that the district is set up for agricultural businesses, retail services and restaurants which support agricultural and residential uses. While it was his opinion that the proposed McDonald's was compatible with the nature of a village, he did concede that the drive thru component is "a little unique" for the neighborhood. He also noted that the proposal included 49 parking spaces (reduced to 46 at hearing), though the County Code only requires 17 spaces for a restaurant of that size.

Upon cross-examination, the witness testified that a McDonald's of this size uses approximately 1100 gallons of water per day. A single family house uses approximately 275 gallons per day. As no well has yet been drilled on the property for the McDonald's, the witness did not know what the well yield would be, nor was he aware of the current yield for the well which services the High's store. Upon review of well yields on surrounding properties, he found yields ranging from 2 to 12 gallons per minute. The minimum septic reserve required for this project is 40,000 square feet. Several parking spaces that had originally been proposed have been eliminated in order to obtain the required septic reserve. The witness testified that if further studies indicate that additional septic reserve is required, it might be necessary for him to recommend elimination of the second access drive. However, he indicated that McDonald's normally would not utilize a site if there were not at least two means of access.

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The traffic impact study conducted by the applicant was also based upon the rear access road remaining open. Further, Mr. Pierce testified that he was aware that concerns had been raised by the Health Department as to the possibility of groundwater contamination in the area and the potential effect of the proposed use on the migration of the groundwater. According to the witness, the applicant plans to conduct hydrogeologic studies in this regard and the results of such studies could lead to proposed changes in the type of stormwater management utilized, the location of same, the location of the well, or even potential abandonment of the project.

Applicant's traffic expert, Mr. Kenneth Schmid from Traffic Concepts, Inc., opined that the construction of the McDonald's in the proposed location would be consistent with the county's adequate public facilities requirements. He did indicate that the McDonald's could be expected to generate approximately 1600 vehicle trips per day (800 vehicles), but did not believe that this would create more turning conflicts than currently exist near the proposed location. The witness indicated that he had never done any actual trip generation studies on an existing McDonald's. The High's store and gas station currently generate approximately 450 trips per day (225 vehicles). The witness also opined that pedestrians and customers at the High's store would not interact any more with the traffic from the McDonald's than with the current High's traffic. On cross examination, the witness testified that at least one unsignalized intersection studied would operate at an "F" level of service in the future and that the presence of the McDonald's would worsen turning movements in that intersection if no improvements were made to the roadway.

Mr. Bharat Parikh, construction project manager for McDonald's, testified regarding the design of the proposed building and exterior lighting. McDonald's would construct 11 light poles with 13 fixtures, with all fixtures facing downward to prevent glare into the surrounding neighborhood. He indicated that McDonald's employees would be responsible for clean-up of litter within a block radius of the site and that loiterers would be asked to leave. The witness further noted that McDonald's expects a large truck delivery once a day and they are instructed not to arrive during peak hours. Approximately once a week, there is a delivery involving a 45 foot trailer truck, which also would be instructed to arrive at limited hours.

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Several citizens testified in favor of the applicant's proposal citing potential employment for teens, closer access to fast-food and sponsorship of community activities as their primary reasons for support.

Mr. Anthony McClune testified on behalf of the Department of Planning and Zoning. The Department has recommended denial of Applicant's proposal on several grounds. First, Mr. McClune testified that rural villages, like Jarrettsville, are intended to serve surrounding agricultural and rural communities. Villages are not generally served by public water and sewer and there are no plans to bring water and sewer to Jarrettsville. The Department of Planning and Zoning is concerned that the proposed use and intensity of use is not consistent with the Rural Village designation as outlined in the Master Land Use Plan. Mr. McClune is not aware of any fast food restaurants located in a rural village zone in Harford County. In addition, Planning and Zoning referred to concerns raised by the Health Department with regard to the adequacy of septic reserve area on the site, as well as the potential effect of applicant's use of a large amount of groundwater on the migration of groundwater contamination in the area. The studies necessary to determine water quality and quantity have not yet been performed.

Mr. McClune further testified that Planning and Zoning had not had an opportunity to review applicant's traffic study, but that concerns remained regarding significant traffic conflicts due to turning movements given the fact that the proposed access drive is only 400 feet from a major lighted intersection and only 120 feet from access to an adjoining small shopping center.

Ms. Susan Kelly, Director of Environmental Health for the Harford County Health Department, testified on behalf of that Department. Referring to a letter dated October 4, 1999 from Mr. Gary Browning, Sanitarian for the Health Department (Applicant's Exhibit No. 5), Ms. Kelly stated that the Health Department is unable to make a final determination at this time.

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As stated in the letter, the Health Department cannot concur with the current proposal regarding septic drainfield and capacity calculations until further tests and studies are conducted. The Department has continuing concerns regarding wastewater flow, availability of adequate septic reserve area, effect on direction of groundwater flow and contamination in the vicinity and impact on surrounding properties. Studies which must be conducted include nitrogen balancing analysis, mounding analysis, and a hydrogeologic study which should be evaluated by the Maryland Department of the Environment. Ms. Kelly also testified that there have been problems in the Jarrettsville village area with obtaining high well yields. A fast food restaurant such as McDonald's has a projection of water use of approximately 75 gallons of water per seat per day. For this restaurant, that projection would total approximately 4500 gallons, as compared to 450 gallons per day for a three-bedroom residential home. The witness indicated that there are several wells in the area experiencing EOC contamination whose source is unknown. Until additional studies are performed, the Health Department is unable to make a final recommendation regarding this proposal.

Mr. Richard Appel of 3813 Belmont Drive appeared in opposition to the request. He has lived in Jarrettsville for 28 years. Mr. Appel is familiar with the property and with the Village Business zoning designation. He objects to the request for several reasons, the primary being that a fast food restaurant is too intensive a use for a Village Business District. Mr. Appel testified that he researched fast-food restaurants in Harford County and found 35 listed in the Harford County telephone directory, none of which is located in a Village Business district. A chart which he prepared showing the locations of other fast food restaurants was admitted as Protestant's Exhibit 14.

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Ms. Patricia Barwick, 1741 Jarrettsville Road, appeared in opposition to the request. She has lived in Jarrettsville for 31 years. Ms. Barwick echoed the concerns of other opponents, but also noted that Jarrettsville Road is not safe given the amount of traffic which will be generated as a result of the proposal. She testified that the roadway currently has no paved or proper shoulders, no sidewalks and that traffic will bottleneck at the intersection of Rt. 165 and Jarrettsville Road. For teenagers and young children who might walk to the McDonald's there would be a significant safety hazard. She was also concerned about more trash and litter on her's and neighboring residences.

Alan Harbold, 3527 Advocate Hill Drive, opposed the request. He has lived approximately one mile from the proposed site for 15 years. He can see the lights of the existing intersection from his porch. Mr. Harbold's testimony echoed previous objections, but added that the volunteer fire company is located just north of the intersection and that additional traffic congestion could affect emergency vehicle response time. He noted that there are no shoulders on Route 165 for vehicles to pull over if an emergency vehicle is approaching and there are no acceleration/deceleration lanes for traffic trying to get out of the way when turning from the proposed access drives. He also stated that there are no public rest rooms located at the High's store because of water supply and health department concerns.

Several other residents of Jarrettsville testified in opposition to the request because of concerns about well yields. Two witnesses have had wells on their property go dry and are aware of others with similar difficulties.

Ms. Pat Brown, 2310 Cox Road, a resident for 28 years, appeared in opposition to the request and produced numerous photographs of the proposed site and the surrounding area. These were admitted into evidence and marked Protestant's Exhibits 1 through 12. Twelve other residents of Jarrettsville testified in opposition for reasons similar to those already noted, including traffic congestion and safety, water and septic availability, disruptions to the surrounding neighborhoods due to lighting, noise, and trash and the general concern that a fast food restaurant is not in character or harmony with the surrounding rural village business and residential community.

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CONCLUSION:

In general, special exceptions may be approved upon consideration of several factors which are set forth in various sections of the Harford County Code. They include: compatibility with other uses permitted within the particular zoning district (Section 267-51); preservation of harmony with adjacent uses (Section 267-52(A)); no adverse effect upon the public health, safety and welfare (Section 267-9(I)); and no creation of dangerous traffic conditions or jeopardy to people's lives or property within the neighborhood (Section 267-9(I)).

With regard to this particular request, the applicable standards for a special exception to locate a fast-food restaurant with drive-thru service in a Village Business district may be found in the Code sections noted above, as well as the following:

Section 267-38(A) defines the purpose of the Village Business District as:

"Purpose. This district is intended to provide business services to rural areas and to preserve and enhance the character and function of long-established rural settlements. This district compliments the VR District by providing a mix of business and residential uses at an appropriate scale..."

Section 267-33, Table 1 of the Code provides that a restaurant is a permitted use in a Village Business District if approved as a Special Exception. Section 267-53(H)(7) of the Code provides that restaurants may be granted as a special exception in a VB District provided that "the parking and access requirements of Part 1 shall apply" and the location of the restaurant allows "direct access to an arterial or collector road."

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In addition, Section 267-9(I), "Limitations, Guides and Standards", provides specific standards and guidelines to be considered:

Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.

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In the case of Schultz v Pritts, 291 Md. 1, 432 A.2d 1319 (1981), the Maryland Court of Appeals discussed the application of these standards in determining the validity of a special exception in a designated zoning district. The Court held that:

"...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge *whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan*.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied." (Emphasis added) 291 MD. At 11-12, 432 A.2d at 1325.

The Court further held that the test for determining the existence of a sufficient "adverse effect" to justify a denial of a request is "...whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz, 291 Md. At 15, 432 A.2d at 1327.

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Based upon the evidence presented, the Hearing Examiner concludes that the Applicant does not meet the standards and requirements of the Harford County Code for a special exception as proposed. While a restaurant is a use permitted as a special exception in a Village Business District, matters of size and scale, including the intensity of use, must be considered. As noted above, the purpose of a Village Business District is to "provide business services to rural areas and to *preserve and enhance the character and function of long-established rural settlements*. This district compliments the Village Residential District by providing a mix of business and residential uses *at an appropriate scale*." (Emphasis added). Section 267-38(A).

Jarrettsville is currently zoned and remains a rural village. Properties adjacent to and immediately surrounding the subject property are zoned agricultural, ag/residential, village residential and village business, with some rural residential developments around the perimeter. The location of a 60 seat fast food restaurant with drive-thru windows, anticipating a need for over 45 parking spaces and a volume of over 800 vehicles per day is simply not appropriate or in harmony with the general purpose and intent of the comprehensive zoning plan, nor in accord with the purpose of the Village Business zone. While this finding alone would compel the Hearing Examiner to recommend denial of the request, there are additional factors which move against approval of this application.

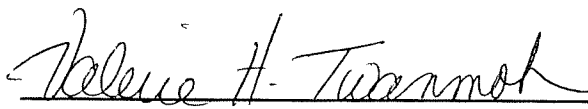
Applying the standards set forth by the Maryland Courts and the Harford County Code, as recited above, the Hearing Examiner finds that the Applicant's proposal is not compatible with the surrounding neighborhood and will have a greater impact at this location than if it were located elsewhere within the Village Business zone. As both the Department of Planning and Zoning, the Health Department and several citizens testified, there are existing problems with low water yields and groundwater contamination in the area surrounding the subject property. The proposed water usage by Applicant, even at the lowest estimated levels, far exceeds the average withdrawal by other property owners or uses in a rural village or rural residential areas. The particular property, based upon its shape and topography, and because it is already improved by a convenience store/gas station, does not appear to have adequate area available for the necessary septic and/or stormwater management systems. In addition, legitimate concerns have been raised regarding traffic conditions and safety at this location.

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The testimony of Applicant's traffic expert appeared to be conflicting regarding whether adequate levels of service could be maintained under Harford County's Adequate Public Facilities law (which requires that the level of service on affected roads maintain a rating of "C" or higher). (See Section 267-104(B)(2)(c)(3)(b)). Setting aside the issue of the APF provisions specifically, the evidence does demonstrate that traffic conditions would be adversely, if not dangerously, affected by Applicant's proposed use. Applicant's traffic expert estimated that the restaurant would generate approximately 1600 vehicle trips per day. Based upon the expert's own study, this marks a significant increase in vehicles traversing the access road which already serves the High's convenience store and gas station. Logic dictates that such an increase in vehicular trips likewise involves a significant increase in turning conflicts, as testified to by the Planning and Zoning Department as well as village residents. The placement of the proposed access roads in close proximity to a major intersection and another business access only increases the likelihood of traffic safety problems. Lack of sidewalks, designated shoulders or turn lanes in the area also impact traffic safety. These adverse impacts are all greater at the proposed site than they would be in other areas within the zone due to the shape and location of the property, the operation of the convenience store/gas station on the subject property, and the design of the roads in the surrounding area. Even if it were determined that a fast-food restaurant with drive-thru service was in accord with the purpose of a Village Business district, which the Hearing Examiner has found to the contrary, it is clear that this proposed request does not meet the standards and guidelines for a special exception under the stated requirements of Maryland case law and the Harford County Code.

Accordingly, the Hearing Examiner respectfully recommends that the Applicant's request be denied.

Date January 14, 2000


Valerie H. Twanmoh
Zoning Hearing Examiner